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7 The Honorable James Robart
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DWIGHT HOLLAND,

NO. 12-cv-0791 JLR

Plaintiff,

PRETRIAL ORDER

v.

KING COUNTY ADULT
DETENTION, KING COUNTY et al.,
KING COUNTY DISTRICT COURT
EAST DIVISION-Redmond Courthouse
et al., WASHINGTON STATE
DEPARTMENT OF LICENSING, et al.,
WASHINGTON STATE PATROL et al,
OFFICER WSP ANTHONY BROCK in
his individual and official capacity as
Washington State Patrol officer,
LAKEYSHA NICOLE WASHINGTON
in her individual and official capacity as
Prosecuting attorney, KING COUNTY
PROSECUTING ATTORNEY'S
OFFICE et al., GARY WESTSIDE
TOWING LLC,

Defendants.

JURISDICTION

The events occurred in in King County. Jurisdiction is vested in this court by virtue of 28
U.S.C. §1333 and 42 U.S.C. §1983 – federal question jurisdiction. State law claims have been
dismissed.

CLAIMS AND DEFENSES

The remaining parties in this case are the plaintiff and Washington State Patrol Trooper Anthony Brock (defendant or “Trooper Brock”). The plaintiff will pursue at trial the following federal claims:

1. Plaintiff's right under the Fourth Amendment to be free from an unreasonable seizure (wrongful arrest) were violated under 42 U.S.C. § 1983 by defendant Trooper Brock.

2. Plaintiff's right under the Fourth Amendment to be free from excessive force were violated under 42 U.S.C. § 1983 from handcuffing by defendant Trooper Brock.

The defendant will pursue the following affirmative defenses and/or claims:

1. Defendant does not bear the burden of proof on any claim at issue in this action. Plaintiff lacks evidence to support his claims, cannot meet his burden of proof, and accordingly defendant denies all of the plaintiff's claims.

2. Plaintiff cannot establish a constitutional violation. Even if he could, Trooper Brock is entitled to qualified immunity.

3. Any emotional damages from which the plaintiff claims to suffer existed prior to the alleged incidents and/or were caused by acts independent of the alleged incidents.

4. The injuries and damages complained of herein, if any, were pre-existing, caused by plaintiff's own conduct, and/or the conduct of others and are barred and/or subject to the law of comparative fault.

5. Plaintiff's injuries and/or damages, if any, were proximately caused by the wanton and willful misconduct of plaintiff in intentionally acting in reckless disregard of the consequences.

6. Plaintiff failed to mitigate his damages, if any, and protect himself from avoidable consequences.

ADMITTED FACTS

The following facts are admitted by the parties:

1. On September 16, 2011, shortly after 1:32 a.m., Trooper Brock conducted a traffic stop of
 2 plaintiff's vehicle for allegedly speeding southbound on SR-509 in Seattle.

3. Plaintiff was arrested by Trooper Brock for suspicion of Driving Under the Influence
 4 (DUI).

5. Trooper Brock did not know plaintiff's race or ethnicity and did not know plaintiff was
 6 African-American until after he was at plaintiff's driver-side window.

7. When Trooper Brock contacted plaintiff on the driver's side of his truck, plaintiff initially
 8 rolled his driver's side window down approximately one half inch.

9. After Trooper Brock contacted plaintiff on the driver's side of his truck, plaintiff spoke to
 10 him with his head turned away from him.

11. Plaintiff refused to take the voluntary field sobriety test.

12. Plaintiff was placed in handcuffs. Within minutes after plaintiff complained his handcuffs
 13 were too tight, Trooper Brock adjusted his handcuffs.

14. Trooper Brock asked plaintiff if he would submit to a breath test for alcohol.

15. Plaintiff did not submit to any breath test for alcohol.

16. Plaintiff was booked into the King County Jail.

17. Plaintiff never complained to anyone at the King County Jail of any wrist pain or
 18 discomfort from being handcuffed.

19. Plaintiff does not have any medical evidence that he suffered emotional distress as a
 20 result of any actions of Trooper Brock.

21 ISSUES OF LAW

22 The following are the issues of law to be determined by the court:

1. Did Trooper Brock have probable cause to arrest plaintiff under the Fourth Amendment?
2. Was Trooper Brock's use of "force" in handcuffing plaintiff reasonable under the circumstances?
3. Is Trooper Brock entitled to qualified immunity?

1 EXPERT WITNESSES

2 Not applicable.

3 OTHER WITNESSES

4 The names and addresses of witnesses, other than experts, to be used by each party at the time
5 of trial and the general nature of the testimony of each are:

6 (a) On behalf of plaintiff:

7 1. Yolanda King – Will testify
8 810 L st se
9 Auburn, WA 98002
10 206-458-5674

11 Information regarding the pain Holland suffered from the Hand cuff injury sustained by
12 Trooper Brock's hand cuffs.

13 2. Stacey A. Wilson – Possible witness only
14 2021 Grant Ave. Unit C-201
15 Renton, Washington [98055]
16 253.486.3004

17 Information regarding (1) procedures for inmate communications at King County
18 Adult Detention Center, including legal mail, confidential calls (2) Admitting and
19 addressing new inmates medical needs (3) Addressing current inmates medical needs

20 3. Dr. Mayer - Possible witness only
21 Group Health 1420 5th Ave. Ste 375
22 Seattle, WA 98101
23 Physician Seen my wrist

24 Information regarding Holland's injury he sustain from Trooper Brock's handcuff

25 (b) On behalf of defendant:

26 1. Dwight Holland
27 325 Washington Ave. #332
28 Kent, WA 98032

29 Will testify. Mr. Holland is the plaintiff in this case and will testify to the facts and
30 circumstances of this incident.

31 2. Trooper Brock
32 c/o Tobin E. Dale, AAG
33 Office of the Attorney General

1 800 5th Avenue, Suite 2000
2 Seattle, WA 98104

3 Will testify. Trooper Brock is a named defendant and will testify to the facts and
4 circumstances of this incident.

5 3. Capt. Mark Brogan
6 Washington State Patrol
7 210 11th Avenue SW
8 Olympia, WA 98504

9 Possible witness only. Capt. Brogan may testify to the training provided Trooper Brock,
10 procedures for DUI arrests, his performance, and other matters related to the allegations contained
11 in plaintiff's complaint.

12 4. Lt. Dan Atchinson
13 Washington State Patrol
14 Fire Training Academy
15 North Bend, WA

16 Possible witness only. Lt. Atchinson may testify to the training provided Trooper Brock,
17 procedures for DUI arrests, his performance, and other matters related to the allegations contained
18 in plaintiff's complaint.

19 5. Carla Weaver-Groseclose
20 1125 Washington Street SE
21 HLB, Floor 1
22 Olympia, WA 98501

23 Possible witness only. She may testify to the facts and circumstances of the revocation of
24 plaintiff's driver's license and why his driving privileges have not been restored.

25 6. Correctional Officer Rita Moses
26 c/o Endel Kolde
27 King County Prosecutor's Office
28 516 Third Ave., Suite W554
29 Seattle, WA 98104-2390

30 Will testify. King County Correctional Officer Rita Moses will testify regarding the
31 screening interview of plaintiff at the jail, the intake procedures at the jail, as well as the booking,
32 assessment, and evaluation of plaintiff.

33 7. Susan Densmore, RN
34 Colleen Larsen, RN
35 c/o Endel Kolde
36 King County Prosecutor's Office
37 516 Third Ave., Suite W554
38 Seattle, WA 98104-2390

1 Will testify. Ms. Densmore and/or Ms. Larsen will testify to the facts and circumstances
2 of the medical, assessments, examinations and/or evaluations provided to plaintiff following the
3 incident.

4 8. Deputy Prosecuting Attorney Lakeysha Washington
5 Senior Deputy Prosecuting Attorney Erin Norgaard
6 c/o Endel Kolde
7 King County Prosecutor's Office
8 516 Third Ave., Suite W554
9 Seattle, WA 98104-2390

10 Possible witnesses only. Ms. Washington and/or Ms. Norgaard may testify regarding the
11 underlying criminal matter against plaintiff and its final disposition.

12 9. Rebecca Duke, M.D.
13 Swedish Physicians – Central Seattle Clinic
14 1600 E Jefferson ST, #510
15 Seattle, WA 98122

16 Possible witness only. She may testify regarding her letter dated November 7, 2013 for
17 Ms. Yolanda King and to rebut Ms. King's testimony.

18 EXHIBITS

19 Given the dismissal of King County defendants, plaintiff withdraws his exhibits 6, 7, 9, 16, and
20 21.

21 (a) Admissibility stipulated:

22 Plaintiff's Exhibits: N/A

23 Defendant's Exhibits

24 A-1 Holland Arrest/WSP Case Report Citation # 1Z0501814 (90040001-90040013)
25 A-2 Video of Traffic Stop of Plaintiff, 9/16/2011
26 A-3 Video of Plaintiff in Trooper Brock's Patrol Car, 9/16/2011

27 (b) Authenticity stipulated, admissibility disputed:

28 Plaintiff's Exhibits

29 1 Washington State Patrol Affidavit, 1Z0501814, Trooper Brock

1 2 Uniform Washington State Tow/Impound And Inventory Record
2 3 Washington State DUI Arrest Report Implied Consent Warning For Breath
3 4 Washington State DUI Arrest Report DUI Interview
4 5 Washington State DUI Arrest Report Sobriety Tests
5 8 Booking photo and fingerprints
6 10 Money/Property Release Form
7 13 King County District Court, Criminal Complaint, *State v. Holland*
8 14 King County District Court, *State v. Holland*, Various Notices/Pleadings
9 15 King County District Court, *State v. Holland*, Motion, Certification and Order of
10 Dismissal
11 19 WAC 308-100-210

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13 Defendant's Exhibits

14 A-4 Certified copy of Plaintiff's Driving Record
15 A-5 Certified copy of Plaintiff's Order of Revocation for one year dated 09/30/11
16 A-6 King County Jail Intake/Screening Records
17 A-7 Group Health Medical Record, 11/17/2008
18 A-8 Group Health Medical Record, 02/10/2009
19 A-9 Group Health Medical Record, 04/10/2009
20 A-10 Group Health Medical Record, 03/31/2011
21 A-11 Plaintiff's Complaint for Damages, *Holland v. Hawkeye, et al.*, 04-cv-01821-RSL
22 A-12 Plaintiff's First Amended Complaint, *Holland v. ER Solutions, Inc.*, 11-cv-01792-RSL,
23 ECF No. 14
24 A-13 Plaintiff's Complaint, *Holland v. Draper*, 12-cv-01409-JCC
25 A-14 Order Granting Defendant's Motion for Summary Judgment, ECF No. 30, *Holland v.*
26 *Draper*, 12-cv-01409-JCC

1 A-15 Defendant Trooper Brock's First Requests for Admission to Plaintiff and Plaintiff's
2 Response Thereto

3 A-16 Defendant Trooper Brock's First Interrogatories to Plaintiff and Plaintiff's Answers
4 Thereto

5 A-17 Defendant Trooper Brock's First Request for Production to Plaintiff and Plaintiff's
6 Responses Thereto

7 A-18 Letter dated 11/07/2013 from Swedish Physicians Re: Yolanda King

8 A-19 Hand sketch by Yolanda King of plaintiff's alleged wrist injuries

9 **(c) Authenticity and admissibility disputed:**

10 Plaintiff's Exhibits

11 King County Department of Adult Detention FBI background check

12 ALL CITY Bail Bond Posted for release

13 Internet Article, Alcohol and Nutrition – How does alcohol affects your blood sugar?
14 *MedicineNet.Com* - by Betty Kovacs, MS, RD

15 Blog, DUI limit really more of a guideline for state troopers in Washington State,
16 Seattle DUI Attorney, Lebya Defense PLLC

17 Excerpt from article, KIRO Radio Reporter

18 Defendant's Exhibits: N/A

19 ACTION BY THE COURT

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21 (a) This case is scheduled for trial before a jury on January 21, 2014.

22 (b) Trial briefs shall be submitted to the court on or before January 13, 2014.

23 (c) Jury instructions requested by either party shall be submitted to the court on or before
24 January 13, 2014. Suggested questions of either party to be asked of the jury by the
25 court on voir dire shall be submitted to the court on or before January 13, 2014.

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1 This order has been approved by the parties as evidence by the signatures of their counsel.
2 This order shall control the subsequent course of the action unless modified by a subsequent
3 order. This order shall not be amended except by order of the court pursuant to agreement of
4 the parties or to prevent manifest injustice.

5 DATED this _____ day of January, 2014.
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9 United States District Judge James Robart
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13 FORM APPROVED
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15

16 s/ Dwight Holland per 12/24/13 E-mail Authorization Dwight Holland DATED this 24th day of December, 2013.
17 Pro Se Plaintiff
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19

20 s/ Tobin E. Dale DATED this 24th day of December, 2013.
21 TOBIN E. DALE, WSBA No. 29595
22 Assistant Attorney General
23 Attorneys for Defendant Trooper Brock
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CERTIFICATION OF SERVICE

I hereby certify that on this 24th day of December, 2013, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Dwight Holland: dmanh3@comcast.net

/s/ Tobin E. Dale
TOBIN E. DALE, WSBA No. 29595
Assistant Attorney General
800 Fifth Ave., Ste. 2000; Seattle, WA 98104-3188
Tel: (206) 464-7352; Fax: (206) 587-4229
E-mail: TobinD@atg.wa.gov